

# **EXHIBIT 25**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THE STATE OF NEW YORK and THE CITY  
OF NEW YORK,

Plaintiffs,

-v-

UNITED PARCEL SERVICE, INC.,  
Defendant.

15 Civ. 1136 (KBF)

**ECF CASE**

**DECLARATION OF MICHAEL SHEA**

MICHAEL SHEA, under penalty of perjury, declares as follows:

1. I am employed by United Parcel Service, Inc. ("UPS") as a Business Manager of UPS's Jamestown, Dunkirk, and Olean, New York Centers. I have personal knowledge of the facts set forth below, and if called as a witness, I could and would testify under oath to the matters set forth in this declaration.

2. I have been employed by UPS for 36 years. In 1980, I was hired by UPS as a loader at the Buffalo Hub. In 1987, I became a driver at the Buffalo Hub. In 1990, I was promoted to a Supervisor, then Human Resources Supervisor, and then On-Road Supervisor, all at the Buffalo Hub. In 2003, I transferred to the Jamestown Center as an On-Road Supervisor. In 2011, I was promoted to my current position as Business Manager of the Jamestown, Dunkirk, and Olean Centers.

3. As Business Manager of the Jamestown, Dunkirk, and Olean Centers, I have three direct reports (the On-Road Supervisors of each Center who essentially supervise the operations of each Center); four to five Part-Time Supervisors who report indirectly to me through the On-

Road Supervisors; and approximately 120 other indirect reports, namely, drivers, pre-loaders, and local sorters.

4. The first time I had to enforce UPS's Tobacco Policy was in 2011, when I became Business Manager of the Jamestown, Dunkirk, and Olean Centers, as neither the Jamestown Center nor the Buffalo Hub where I previously worked picks up packages from smoke shops or tobacco businesses on Native American reservations or has had any issues with cigarette shipments. The Dunkirk and Olean Centers service tobacco shops and businesses on Native American reservations.

5. Drivers at the Dunkirk Center on average pick up approximately 350-400 packages a day and deliver approximately 2,500-3,000 packages a day to the geographic service area. Each driver for the Dunkirk Center makes approximately 125 stops daily over an on average 110-mile radius.

6. Drivers at the Olean Center on average pick up approximately 2,000 packages a day and deliver approximately 4,500 packages a day to the geographic service area. Each driver for the Olean Center makes approximately 135 stops daily over an on average 80-mile radius.

7. Even prior to becoming Business Manager in 2011, I was aware of UPS's Tobacco Policy. In or about 2005, UPS changed its Tobacco Policy to provide, among other things, that shippers are not permitted to ship cigarettes to residential addresses. While UPS's Tobacco Policy prohibits the shipment of cigarettes to residential addresses, there is no prohibition on the shipment of other tobacco products, such as little cigars and pipe tobacco, both of which UPS is permitted to ship to a residential (or any) address, provided that the shipper complies with applicable regulations governing such shipments.

8. I also am aware that as part of UPS's Tobacco Policy, shippers who ship tobacco products other than cigarettes to consumers were (and still are) required to sign a document called a Tobacco Agreement acknowledging UPS's Tobacco Policy and agreeing to abide by it, although I do not handle these Tobacco Agreements and have never seen one.

9. I have seen cartons of little cigars and cartons of cigarettes and except for the words on each respective carton, the cartons are identical in shape, size, and weight. There is no way to distinguish on the face of a sealed package between a sealed package that contains cartons of little cigars verses a sealed package that contains cartons of cigarettes.

10. Drivers pick up sealed packages from customers and do not assist customers in the actual packing of the boxes.

11. As part of my job as Business Manager, I often give or am present at the Pre-Morning Communication meetings ("PCM") given to drivers at the Dunkirk and Olean Centers at the beginning of their shift at approximately 8:00 a.m. I periodically have included or heard others include UPS's Tobacco Policy as part of the drivers' PCMs.

12. Periodically, I also have received direction from UPS Corporate to give a specific PCM about UPS's Tobacco Policy and have either given such PCM myself or instructed the Supervisors of the Dunkirk or Olean Centers to give such PCM and followed up with them to ensure that it was given. UPS Exhibit DX-349 is an example of one such PCM from UPS Corporate. [UPS00057236]

13. Since approximately two to three years ago, there has been a poster prominently displayed on a bulletin board in the main areas of the Dunkirk and Olean Centers reiterating UPS's Tobacco Policy and illustrating warning or "red flags" that a package may contain illegal cigarettes.



14. The PCMs are an effective form of training. After one of the tobacco PCMs was given, a driver, Louis Potter, informed me that he thought a smoke shop in Salamanca, which I now know to have been Indian Smokes, might be shipping cigarettes. In response, I contacted UPS Security and also the shipper's Account Executive, Gerry Fink. I do not recall my discussion with Gerry Fink but UPS ceased providing service to the shipper (Indian Smokes); ultimately, UPS terminated Indian Smokes's account.

15. I have a good working relationship with Account Executive Gerry Fink who periodically is present at PCMs at the Dunkirk and Olean Centers. I have discussed with Mr. Fink how the cancelation of smoke shop accounts has negatively impacted his compensation, but he has informed me (and I have stressed to him) that he understands the need to enforce UPS's Tobacco Policy and does not wish to service any customer that violates it. During my approximately fifteen-year working relationship with Mr. Fink and although he does not report to me, I have always known Mr. Fink to follow UPS's rules, procedures, and policies.

16. UPS Dangerous Goods (also referred to by UPS employees as UPS Security) periodically sends me and my direct reports instructions on when to audit a particular shipper. For all these audits, we follow the same procedure as set by UPS Security: we look on the conveyor belt for packages from the requested shipper; if we see any such packages, we remove them from the conveyor belt and open them; we photograph the packages, the labels on the packages, and the contents of the packages; and we forward these photographs to UPS Security and await further instructions.


17. I have overseen audits at both the Dunkirk and Olean Centers. When I received requests from UPS Security for audits, I would assign the audit to the appropriate Center's Supervisor or Night Supervisor. UPS Exhibit DX-269 [UPS00056889], Exhibit DX-373

[UPS00144047], and Exhibit DX-243 [UPS00056902] are copies of such audit requests. I do not recall the specifics of these audits, but recall that they primarily revealed little cigars and chewing tobacco with the prevalence of little cigars increasing during the past few years.

18. In September 2012, I am aware of UPS's audit at the Olean Center of a shipper named Mail Order Club. The audit, which revealed cigarettes, was conducted after a driver informed me that UPS was receiving a large number of calls from different individuals scheduling pickups at the same address. UPS ultimately determined that Mail Order Club was attempting to circumvent UPS's enforcement of the Tobacco Policy by instructing its customers to call and schedule pickups at Mail Order Club's address, rather than use a UPS account to ship the packages themselves. Based on that decision, UPS stopped all pickups from that address. Attached as Exhibits <sup>DX-547</sup> [UPS00057103] <sup>DX-546</sup> and [UPS00057099] are email discussions surrounding the audit and termination of Mail Order Club.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Dated: Jamestown, New York  
August 24, 2016

  
Michael Shea